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Supreme Court, U.S.
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No. 02-624 August 23 2002

In The

Supreme Court of the United States

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ENOC C. and EMMA F. AGUILERA

Petitioners,

vs.

AUTO/OWNERS INSURANCE COMPANY;
DANIELS/NICHOLSON INSURANCE AGENCY;
FARMERS INSURANCE GROUP ET AL.;
UTICA NATIONAL INSURANCE GROUP ET AL.,

Respondents.

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On Petition For Writ Of Certiorari To The
Court of Appeals For The State Of
Arizona Appellate Court Division One

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SUPPLEMENTAL BRIEF
[RULE 15:8]

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SUPPLEMENTAL BRIEF

[Pursuant to Rule 15:8]

"State Court" No:CV99-011756

[App.at 1.] BACKGROUND and CLAIMS with Reference made to Petition's Appendix:

Claims made in this SUPPLEMENT have been reintroduced due to counsel for the Respondents improper expanding of the dismissed litigation. The Petition asks whether the Respondents courted shields granted by Arizona courts can continue to deprive the Petitioner, his wife, and their Christian ministry of THE BOOK MINISTRY from their legal right to sue Respondents' to enforce the following:

A) THE COMMUNICATIONS DECENCY ACT OF 1996;
B) PETITONERS' CONSTITUTIONAL RIGHTS UNDER THE FIRST, SEVENTH, AND FOURTEENTH AMENDMENT;
C) PETITIONERS' RIGHT TO BE PROTECTED UNDER THE FEDERAL PRIVACY ACT?

The firm of BROENING OBERG WOODS WILSON & CASS, retained by Farmers Insurance Company and Edward J. Frautschi Agency to provide a defense for the dismissed defendant directly

responsible in this case from its initiation, were not included in this Petition until now due to Respondents' serious involvement before the Honorable Court: Now AFFIRMED AS TO OTHER CAUSES OF ACTION in PPDR DR NO. 61669181: JOINDER IN MOTION TO STRIKE NOTICE OF APPEAL.

Under statute providing that action for debt be commenced and prosecuted within six years after accrual of cause of action where indebtedness is evidenced by or founded on written contract executed in Arizona, action which is commenced within six-year limitations period and which is thereafter prosecuted with reasonable deligence should not be dismissed. *W. T. Rawleigh Co. v. Spencer* (1941) 58 Ariz. 182, 118 P.2d 674.

The Respondents' infringed conflict of interest law in relation to the Petitioners' right to compensatory entitlement, violating the due process clause due to our good standing membership. These erroneous decisions have been made by the court of appeals based on trial court rulings contrived through proceedings which were never served upon the Petitioners. The evidential facts in the police report alleging defamatory communica-

tion and sexual assault of three women were not addressed nor adjudicated by the court of appeals and the appellate court. Petitioners right of trial by jury was not preserved but rather blatantly denied. Other public accusations have been made by the perpetrators of the malicious comunication but the courts have failed to address said misrepresentation to the pro se appellants'. These acts of malice, together with the mailing of said communication to all 127 members of the association, and their families, nationwide, went ignored and were treated as minor offense by the court and justices. Whereby, the court of appeals dismissed the action for failure of the pro se appellants to state a claim.

In consequence of which the evidentiary and vital evidence contained in the police report went ignored - treated by the court of appeals as an "interpretation of facts susceptible of proof." Thereupon, to affirm the dismissal of the appellants' cause, the court "satisfied itself as a matter of law" in order to assure that the Plaintiffs would not be entitled to relief under the police report's interpretation. Rather than ruling on the appellees' violation of The Communications Decency Act

of 1996, the court courted the appellees' with illegal theories made to 'cripple the defense' of the appellants. Therewith, the court guaranteeing the appellees' that the appellants cause would never go before a jury trial. For this reason the appellants' claims and merits arising from the police report were ordered by the court barred by the statute of limitations. The court therewith erroneously denied crucial evidence of sustained claims of law: attesting that 'a claim for defamation occurs each time the false statement is repeated to a third person.'

These inimical acts of malicious persecution have imposed through HATE wilfull intent to inflict emotional injury and distress upon the pro se defenseless appellants. Herewith revealing an open "continuing conspiracy" to this day for which the carriers are legally liable:

The Petitioners wife, Emma, is in worst of state due to inflicted Parkinson's disease caused by state of shock and anguish advocated through intimidation brought about by the atrocious subversion: acts of the dismissed defendants to which licentious deeds of ma-

lice the respondents have contributed knowingly, willfully, and intentionally to fraudulently deny the appellants just compensatory award. Wherefore it is immaterial whether the Respondents' knew the representation of their counsel was false or simply did not care and were indifferent to the truth. [See App. at 26: Insurance Policies' and the Preclusive Devices of Estoppel.[2]]

[App. at 9-2A.] ABUSE OF JUDICIAL PROCESS' CONFIRMED:

These and many other pleadings were made to the courts who denied all our requests. Even upon showing of cases ruled on by the courts' themselves:

Actual damage to reputation in real world must be considered by measuring defamatory aspect of publication by its natural and probable effect on mind of average person. In interpreting allegedly defamatory comments to determine whether they are privileged under the first Amendment, the court is to measure publication not by critical analysis of a mind trained in the law, but by natural and probable effect upon mind of average

listener. Court decides in first instance whether, under all circumstances, statement is capable of bearing defamatory meaning, and jury then decides whether defamatory meaning was in fact conveyed. *Yetman v. English.* (1991) 168 Ariz. 71, 811 P.2d 323.

The court of appeals concluded, however, that the doctrine of equitable tolling did not apply to this case *Hosogai v Kadota supra.* The court reasoned that this doctrine applies only where a plaintiff has several legal remedies, in good faith, pursues one which is dismissed after expiration of the statute of limitations, and then files another legal action based on the same facts. *Hosogai v. Kadota.* (1985) 145 Ariz. 227,700 P.2d 1327.

In *Burnet, supra,* 380 U.S. at 427-430, 85 S.Ct. at 1054-55, 13 L. Ed. 2d at 944-46:

The Supreme Court similarly concluded that the purposes behind the statute of limitations were furthered where plaintiff reasonably and diligently prosecuted the first action, defendant received timely notice of the lawsuit within the limitations period by reason of the first action, and plaintiff -

promptly refiled the second action after the first action was dismissed.

[App. at 13-3.] ABUSE OF PROCESS' AND UNLAWFUL CLAIMS:

Let us continue with personal jurisdiction. Arizona has legitimate interests in protecting its citizens from deception with fraudulent schemes; yet consideration of due process was given only to the dismissed defendants and the appellee/respondents'. The state of Arizona judicial system openly failed to protect the appellants' from deceit, fraud, and continued conspiracy.

This constitutes evidence that the Respondents' recognized willfully and, knowingly the fact that their actions were and are unlawful. Wherefore it <u>is</u> immaterial whether they as individuals knew their misrepresentation was false or simply did not care and were indifferent to the truth. In that respect, counsel for the Respondents' and dismissed defendants' should have been held in contempt of court for having maliciously expanded the litigation of the dismissed action. Because of that stated cause

of origin, they openly had made known to the lower courts that they were retained by the Respondents' to represent the dismissed defendants'. Conclusively:

The Respondents', as entities non-parties at fault in the dismissed action, are wholly at fault and liable for the demand made in the complaint. In consequence of which, the continuing conspiracy exists through intentional infliction of emotional distress. Civil and constitutional rights licentiously violated through outrageous conduct so extreme as to exceed, in truth, all bounds of that tolerated in a civilized community. This factual relevant evidence rebukes even the lower courts' decisions. Wherefore:

A judgment of a court lacking personal jurisdiction is a violation of due process, and is null and void everywhere, including the state in which it is rendered. *Burnham v. Superior Court* (1990) 495 U.S. 604, 609.

The Honorable Gary E. Donahoe's violation of the Due Process Clause is clarified in his order of 10/02/2001 - 01/14/2002, and the Honorable Hull's order of 01/18/2002. [App.

at 1, 6.] Therefore, if the Arizona Maricopa County Superior Court did not have personal jurisdiction over the appellants appeal, the judgment of Gary E. Donahoe was void, and the Arizona court of appeals' predication on that judgment was also void as well, regardless of the "situs" of appellants' appeal. The Respondents' defense and the court's apparent finding that Respondents' conduct was "legal under Arizona law" also hinged on the validity of the judgment. If the Arizona judgment was a nullity, then that defense and finding would be insupportable before this Honorable Court. [See App. at 7 and 8.]

The 'Due Process Clause' ensures that the Respondets' are not effectively "judgment proof" for the consequences of obligation responsibility and liability. Judgment must be affirmed if correct on any legal theory. Thus, Respondents' cannot escape liability for distant forum abuse simply because they managed to persuade some local judges to go along with their scheme. While this fact may constitute some evidence on the question of whether Respondents' recognized that their actions were unlawful, it does <u>not</u> establish

that there was any Arizona law that purported to approve of what they were doing.

CONCLUSION [App.at 24 and 28.] CONCLUDING-TO CONCLUDE:

Judge Donahoe's court and Judge Timmer's court [App.at 6-8.] purposefully impaired the Petitioners ability to litigate for just vindication: A gross abuse of process and unlawful adjudication. Whereas, the courts' judgments were ordered, the evidence should have been viewed in the light most favorable to the pro se defenseless appellants claims. Viewed in the light most favorable to the appellants' abuse of process claims: Petitioners' raised "triable" issues of fact the courts erroneously failed to acknowledge.

RESPECTFULLY SUBMITTED this 11th DAY of NOVEMBER, THE LORD'S YEAR of 2002. BY:

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/THE BOOK MINISTRY/